

it has been one of the unifying aspects of social policy in this country that all older people were covered. I think it is absolutely key that as we tackle this issue of prescription drug coverage, and do it in a bipartisan way, we remember how important the principle of covering all seniors is.

Now, I know there are colleagues on the other side of the aisle who feel strongly about this issue as well. I am very pleased in having teamed up with Senator SNOWE for more than a year. She and I are on a bill together, a bipartisan bill, which offers universal coverage. I also appreciate my colleague from Oregon, Senator SMITH, for being supportive of this effort.

There are a number of reasons why universal coverage is so important, and Senator DASCHLE has identified it as a priority for Senators on this side of the aisle. I want to talk for a moment about why I think it is so key in terms of designing a benefit properly. First, it is absolutely essential to ensure that seniors have as much bargaining power in the marketplace as possible. We have all been hearing from our constituents that many of them cannot afford the cost of prescription medicine. I have been coming to the floor of the Senate and reading from letters where older people, after they are done paying prescription drug bills, only have a couple hundred dollars for the rest of the month to live on.

We are seeing all across this country that many older people simply can't afford their medicine. If we are going to give them real bargaining power in the marketplace—and right now, to belong to an HMO, you have plenty of bargaining power—they can negotiate a good price for you. But if you are an individual senior walking into a pharmacy, you don't have a whole lot of bargaining power. In fact, you are subsidizing those big plans. If we design a prescription drug benefit so as to offer universal coverage, this gives us the largest available group of older people, the largest "pool of individuals"—to use the language of the insurance industry—for purposes of making sure those older folks really do have bargaining power in the marketplace.

As we address this issue of bargaining power, I happen to think it is important that we do it in a way that doesn't bring about a lot of cost shifting onto other population groups. That is why the Snowe-Wyden legislation uses the model that Federal employees use for the purposes of their health coverage. As we talk about how to design this prescription drug program, I am hopeful we see universal coverage included. Beyond the fact it is what Medicare has been all about since the program began in 1965, it is absolutely key to make sure older people have the maximum amount of genuine bargaining power in the marketplace.

Second, I think if we were to do, as some have suggested—particularly

those in the House—which is essentially to not have a program with universal coverage, but hand off a big pot of money to the States, and they could perhaps design a program for low-income people, we will have missed a lot of vulnerable seniors altogether. Their proposal—those who would hand off the money to the States to design a program for low-income people—as far as I can tell, would leave behind altogether seniors, say, with an income of \$21,000 or \$22,000, essentially a low- to middle-income senior. In most parts of the country, by any calculus, my view is that sum of money is awfully modest altogether. I see these proposals that hand a sum over to the States for low-income people as leaving a lot of seniors with \$22,000, \$25,000, or \$28,000 incomes behind altogether.

If those individuals are taking medicine, say, for a chronic health problem—they might have a chronic health problem due to a heart ailment or something of that nature—they could be spending somewhere in the vicinity of \$2,500 per year out of pocket on their prescription medicine. One out of four older people who have chronic illnesses such as the heart ailment are spending \$2,500 a year out of pocket on their medicine. As far as I can tell, if they were in that lower- or middle-income bracket, they would simply be left behind altogether under these proposals that would just hand over a pot of money to the States and use this money for low-income people.

Many of the elderly people I described in income brackets of \$22,000 or \$28,000 and paying for chronic illnesses are the people we are hearing from now saying: If I get another increase in my insurance premium, I am going to simply have to leave my prescription at the pharmacist. My doctor phones it in, and I am not going to be able to afford to go and pick it up.

I think it is extremely important that the design of this program be built on the principle of universal coverage. That is what Medicare has been all about since the program began in 1965. It is what is going to ensure that the seniors have the maximum amount of bargaining power. We can debate issues within that concept of universal coverage so as to be more sensitive to those who have the least ability to pay. I have long believed Lee Iacocca shouldn't pay the same Medicare premium as a widow with an income of \$14,000. I think we can deal with those issues as we go forward, if we decide early on that the centerpiece of an effective prescription drug benefit ought to be universal coverage.

There are other important issues we are going to have to discuss. I think there is now growing support for making sure this program is voluntary. When it is voluntary, you avoid some of the problems we are seeing with catastrophic care and ultimately you empower the consumer. It is going to be

the consumer's choice in most communities to choose whether they want to go forward participating in this prescription drug program, or perhaps just stay with the coverage they may have. We estimate that perhaps a third of the older people in this country have coverage with which they are reasonably satisfied. If they are, under the kind of approach for which I think we are starting to see support in the Senate, those are folks who would not see their benefits touched; they could simply stay with the existing prescription drug coverage they have today.

Let's go forward. I think Senator DASCHLE in particular deserves credit for trying to bring the Senate together and for trying to reconcile the various bills.

Let's make sure we don't lose sight of the importance of universal coverage. It is key to giving older people real bargaining power in the marketplace—not through a government program but through marketplace forces, the way HMOs and insurance plans do. Focus on keeping the program voluntary.

I know there are colleagues on the other side of the aisle who share similar sentiments as the ones I voiced today. I particularly want to commend my colleagues, Senators SNOWE and SMITH. They have teamed up with me for more than a year now on a proposal that I think can win bipartisan support. In fact, we already have evidence of bipartisan support from the other side of the aisle because we got 54 votes on the floor of the Senate about a year ago for a plan to fund this program.

I intend to keep coming back to the floor of the Senate. Today, I thought it was important to express what Senator DASCHLE spoke on recently, which is universal coverage. I intend to keep coming back to the floor of this body again and again in an effort to build bipartisan support for making sure vulnerable seniors can get prescription drug coverage under Medicare.

I yield the floor.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived and passed, the Senate stands in recess until 2:15 p.m.

Thereupon, at 12:41 p.m., the Senate recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. THOMAS).

## EXECUTIVE SESSION

NOMINATION OF MARSHA L. BERZON, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

NOMINATION OF RICHARD A. PAEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the time between 2:15 and 5 o'clock is equally divided between the proponents and opponents of the Berzon and Paez nominations.

The Senator from Utah.

Mr. HATCH. I ask unanimous consent that the debate now occur concurrently on the two nominations, as under the previous order; however, that any votes ordered with respect to the nominations occur separately.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, it is my understanding that has been cleared with the minority on the Judiciary Committee.

Mr. HATCH. That is my understanding.

Mr. REID. That being the case, Senator LEAHY having approved this, we have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I rise today to speak on the nomination of federal district Judge Richard Paez to the Ninth Circuit Court of Appeals.

Judge Paez was first nominated for this judgeship during the second session of the 104th Congress—a time when all nominees to the Ninth Circuit got bound up with the difficulties we were having in deciding whether to divide the Circuit. Once we established a Commission to study the matter, we were able to begin processing nominees to that court.

Judge Paez was renominated at the beginning of the 105th Congress, but due to questions surrounding his record on the bench and comments he made about two California initiatives, his nomination elicited heightened scrutiny.

Some have attributed this delay in Judge Paez's consideration by the full Senate to sinister or prejudicial motives. And I can only respond by stating what those very critics already know in their hearts and minds to be true: such aspersions are utterly devoid of truth, and are grounded in nothing more than sinister, crass politics.

As we all know, before any judge can be confirmed, the Senate must exercise its duty to provide assurance that those confirmed will uphold the Constitution and abide by the rule of law. Sometimes it takes what seems to be an inordinate amount of time to gain these assurances, but moving to a vote without them would compromise the integrity of the role the Senate plays in the confirmation process.

And so, it has taken a considerable amount of time to bring Judge Paez's nomination up for a vote. Indeed, it was not before a thorough and exhaustive review of Judge Paez's record that I have become convinced that questions regarding Judge Paez's record have, by and large, been answered.

Because such questions have been answered does not, in all instances, mean they have been answered to my complete satisfaction. But on the whole, I am persuaded that Judge Paez will be a credit to the Ninth Circuit Court of Appeals. In so concluding, I do not want to diminish the seriousness of the concerns raised about certain aspects of Judge Paez's record.

I was troubled by comments Judge Paez made about two California initiatives on April 6, 1995, while sitting as a U.S. District Court Judge. At that time, Judge Paez gave a speech at his alma mater, Boalt Hall School of Law, criticizing the passage of Proposition 187 and criticizing the ballot measure that would later be known as Proposition 209. He described Prop 209 as "the proposed anti-civil rights initiative" and said it would "inflamm[e] the issues all over again, without contributing to any serious discussion of our differences and similarities or ways to ensure equal opportunity for all." Judge Paez went on to opine that a "much more diverse bench" was essential in part because how "Californians perceive the justice system is every bit as important as how courts resolve disputes."

When questioned at his hearing about these and other comments contained in the speech, Judge Paez stated that he was referring only to the potential divisive effect Prop 209 would have on California. He acknowledged that the Ninth Circuit had in fact upheld the constitutionality of Prop 209 and that this ruling resolved any question as to the legitimacy of the initiative. He also stated that he disagreed with the use of proportionality statistics in Title VII or employment litigation. And, perhaps most telling of his judicial philosophy, Judge Paez stated that federal judges must "proceed with caution, and respect that the vote of the people is presumed constitutional."

Legitimate questions have been raised concerning whether his comments were consistent with the Judicial Canon governing judges' extra-judicial activities, and Judge Paez maintains that his remarks fit within the exception set out in that Canon that permits a judge to make a scholarly presentation for purposes of legal education.

I also raised concerns about a decision of Judge Paez's that would allow liability to be imposed on a U.S. company for human rights abuses committed by a foreign government with which the U.S. company had engaged in a joint venture. But it is a single moment in a lengthy catalog of cases in which Judge Paez appears to have handed down solid, legally-supported, precedent-respecting decisions.

Moreover, Judge Paez has earned a good deal of bipartisan support within his home state of California and his native state of Utah, and has given me his word that he will abide by the rule of law and not engage in judicial activism.

For these reasons, I am not willing to stand in the way of this nominee's confirmation. It was during the Committee's thorough review of his record that I became aware of Judge Paez's credentials and career of public service. He is a Salt Lake City native who graduated from Brigham Young University and he received his law degree from Boalt Hall.

Before becoming a Judge on the Los Angeles Municipal Court, he served as an attorney for California Rural Legal Assistance, the Western Center on Law and Poverty, and the Legal Aid Foundation of Los Angeles—and during that time provided legal representation to a Korean War veteran in danger of losing his home to foreclosure, victims of intentional racial discrimination, and others. In 1994, President Clinton nominated, and the Senate confirmed, Judge Paez to sit on the district court bench in the Central District of California.

Although I share many of my colleagues' concerns regarding the stability of the Ninth Circuit, none of us can in good conscience foist those concerns upon Judge Paez—an entirely innocent party with regard to that Circuit's dubious record of reversal by the Supreme Court—and force him into the role of Atlas in carrying problems not of his own making.

Indeed, that Circuit's problems—many of which appear to me to be structural in dimension—call for an altogether different solution than that which this body would seek to impose through its advice and consent powers. And to that end, I have just [this morning] introduced legislation with Senator MURKOWSKI that is being held at the desk so as to enable immediate action by the full Senate—that would divide the 28-judge behemoth of a circuit into two manageable circuits.

To return to the different subject of Judge Paez, I must concede that I have had concerns about his nomination. But on balance I do not believe that Judge Paez will contribute to the roguery that appears to have infiltrated this circuit. I would not, as Chairman of the Judiciary Committee, vote for the confirmation of any nominee who I believed would abdicate his or her duty to interpret and enforce, rather than make, the laws of this Nation.

For these reasons, I will cast a vote in favor of the nomination of Judge Paez to serve on the Ninth Circuit Court of Appeals. I hope a majority of my colleagues will do likewise.

Mr. President, I also rise to speak on behalf of the nomination of Marsha S. Berzon for a seat on the United States Court of Appeals for the Ninth Circuit. Based upon Ms. Berzon's qualifications as a lawyer, I support her nomination. I urge my colleagues to do the same.